

REMARKS/ARGUMENTS

Claims 32-39, 46-67, 96-99, 102, 103 and 105-164 are pending. By this Amendment, claims 105-164 are added. Reconsideration in view of the above amendments and the following remarks are respectfully requested.

Applicants appreciate the indication that claims 32, 33, 36-39 and 96-99 are allowed.

Claims 34, 46 and 62 were rejected under 35 U.S.C. §102(b) over White et al. However, this rejection is respectfully traversed since White et al. does not teach or suggest a nasal mask cushion assembly as recited in claim 34. Specifically, White et al. does not teach or suggest a seal forming portion disposed around the perimeter of the aperture adapted to deform and form a seal of a portion of the wearer's face in a region between the base of the nose and the upper lip and around the sides and over the bridge of the wearer's nose when the mask is in use. White et al. teaches a full face mask and thus cannot anticipate claim 34.

In the August 19, 2005 Office Action, it is stated that White et al. teaches a seal forming portion that is capable of deforming over a user's nose and upper lip. See page 11, second paragraph. However, the premise of this rejection appears to be that White et al. does not teach or suggest a nasal mask, but it is "capable" of deforming over a user's nose and upper lip. Thus, while the rejection is based on anticipation, it appears that the Office Action acknowledges that White et al. does not teach this feature, but instead is "capable" of having this feature. However, Applicants respectfully submit that the issue is whether White et al. teaches the claimed structure, and if not, which is apparently admitted, whether it would have been obvious to one of ordinary skill in the art to have adapted White et al. to include this structure.

White et al. is directed to a respirator which includes a mask worn over the wearer's full face for air filtration or purifying. The focus of White et al. is to prevent atmospheric air from

entering the patient's airways without filtering. This goal would not be accomplished if the full face mask of White et al. were transformed into a nasal mask since unfiltered or unpurified air would be able to easily enter the patient's airways through the exposed mouth of the patient. If the mask of White et al. does not cover the user's nose and mouth, the user could breathe in the hazardous environment – contrary to White et al.'s main goal. Therefore, one of ordinary skill in the art would not have been motivated to have modified White et al. to be nasal only.

In the Advisory Action, the examiner takes the position that White et al. is "capable" of forming a seal between the base of the nose and the upper lip, depending on the size of the user. This assertion is traversed. Applicants respectfully submit that the chin region of White et al. has a cupped geometry, presumably designed to cup the chin. Applicants' belief is that the cupped chin geometry is not adapted to seal or capable of sealing between the base of the nose and the upper lip, as recited in claim 34, without significant redesign. The region under the nose has a different geometry to the region under the chin and different mask designs are not suitable for the other application.

With regard to independent claim 46, White et al. does not teach or suggest that the seal portion is substantially coterminous with respect to the second molded rim and is resiliently deformable towards the first membrane in use of the mask. Instead, White et al. teaches the use of multiple seal portions 18 and 12 in which case the seal portion is not "substantially coterminous" with respect to either one of those seals. In addition, White et al. does not teach that the first and second inwardly curved rims are curved generally towards the nose receiving cavity. Generally speaking, aside from minor aberrations, the seals 12 and 18 are not curved generally towards the nose receiving cavity. This makes sense since the purpose of White et al. is to prevent air from entering into the chamber, i.e., to prevent unfiltered or unpurified air from

passing to the patient's airways, while the seal described in the specification is provided to prevent or reduce the leak of pressurized air in the cavity from easily escaping to atmosphere.

In addition, White et al. does not teach a mask body for connection with a supply of breathable gas, as recited in claim 46. White et al. discloses an exhaust port 6 and a pair of inhalation ports, neither of which is "for connection with a supply of breathable gas" as recited in claim 46.

With respect to independent claim 62, White et al. does not teach or suggest a nasal mask cushion, wherein a substantially full perimeter of the second molded inwardly curved rim is curved towards the front portion of the frame opposite the wearer's face. In White et al., neither seal 12 nor seal 18 has a substantially full perimeter that is curved towards the front portion of the frame opposite the wearer's face. White et al. teaches the opposite arrangement since White et al.'s purpose is to prevent air from coming into the chamber, rather than preventing air from escaping from the chamber.

Independent claim 54 was rejected under 35 U.S.C. §103(a) over Sanders et al. in view of White et al. This rejection is respectfully traversed since it is not obvious to replace the seal of Sanders et al. with the seal system of White et al., just as it is not obvious to modify the full face mask of White et al. into a nasal mask. The seals of White et al. are structured in a specific way in order to prevent air from entering into the breathing chamber. On the other hand, Sanders et al. is directed to a nasal mask for application of positive airway pressure therapy, in which case the seal is provided in order to prevent or reduce the escape of air from the breathing chamber. Accordingly, the seals of White et al. and Sanders et al., respectively, are designed from completely opposite perspectives such that one teaching does not lend itself to the other at least in respect to sealing.

In addition, Applicant's respectfully submit that White et al. would require modification to enable it to work with a CPAP treatment apparatus. For example, the conversion of the White et al. apparatus for use with pressurized gas would present certain challenges, e.g., how and where the air delivery conduit would be attached. Further, the exhalation valve 6 would appear entirely inappropriate for CPAP treatment since it is extremely large, venting so much air to atmosphere that the air would not be pressurized at a therapeutic pressure, thus requiring a new design. In addition, Applicants respectfully submit that the seal of White et al. is likely not appropriate for pressurized gas, as the seal is arranged to prevent air from entering rather than preventing the gas from exiting the breathing chamber. Finally, Applicants respectfully submit that the flexible horizontal pleats 4 in White et al., which allow for jaw movement, would likely mean that the mask would not seal under positive pressure.

Reconsideration and withdrawal of the rejection are respectfully requested.

New claims 105-164 are added for the examiner's consideration. These claims include all of the claims (independent claims 23, 40, 68, 74, 82 and 90 and their dependents) that were previously canceled in the Amendment After Final Rejection Filed November 21, 2005 (and entered per the December 13, 2005 Advisory Action). These reincorporated claims are patentable for at least the reasons outlined in the June 2, 2005 Amendment, incorporated herein by reference. In addition to reincorporating the previously canceled claims, further claims are added that were not presented before. For example, responsive to the comment in the Advisory Action that the cushion is not limited for use with a human, claims 151-156 recite that the nasal mask cushion is adapted to fit with a human patient in use. In addition, claims 157-163 recite that the cushion is a CPAP cushion including a breathing chamber subject to above ambient pressure in use.

KWOK et al.

App. No. 10/068,963

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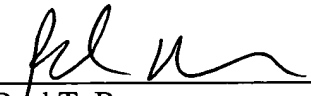
In view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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